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In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 780

PAUL W. PANCZKO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the court of appeals (Pet. App. A) is not yet reported.

JURISDICTION

The judgment of the court of appeals was entered on September 28, 1966. A petition for rehearing was denied on October 19, 1966. The petition for a writ of certiorari was filed on November 18, 1966. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the charge of conspiracy denied petitioner a fair trial.

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2. Whether petitioner was denied the right to a speedy trial.

3. Whether the court acted within its discretion in denying a continuance sought on the ground of pre-trial publicity.

4. Whether the court erred in denying a mistrial.

5. Whether the instructions to the jury were proper.

STATEMENT

Petitioner was convicted on both counts of a two-count indictment, returned in the United States District Court for the Northern District of Illinois, charging (1) that petitioner and four others (named as co-conspirators but not as defendants) conspired to pass and sell counterfeit United States federal reserve notes; and (2) that petitioner sold counterfeit notes to Paul Lacinak, one of the co-conspirators named in count 1 (D.A. 2–3).[1] Petitioner was given consecutive prison sentences of five years on the conspiracy count and ten years on the substantive count (D.A. 5).

The evidence showed that in September, 1960, Paul Lacinak, when approached by Guy Mendola, expressed an interest in handling counterfeit money. Mendola so informed petitioner. The next day petitioner told them that Lacinak should pass the counterfeit money in the Ozarks and return as soon as possible. They decided that the proceeds would be divided three ways after the expenses for the trip had been deducted. The

[1] "D.A." references are to the defendant's appendix in the court of appeals, which has been filed with the Clerk. "G.A." references are to the government's appendix, a copy of which has been lodged with the Court.

following morning, petitioner handed Lacinak a brown paper package containing $7,000 in counterfeit $10 bills, and told him that he would have travelers' checks for him when he returned. Mendola advised Lacinak that the bills should be aged with a grey-hair rinse (D.A. 8–10, 20–21).

Lacinak, his wife and child then left Chicago by automobile, and shortly afterwards he dyed the bills with a hair-rinse (D.A. 9). He cashed two of the bills in Arkansas (D.A. 10, 21–22), and, with his family, proceeded to Springfield, Missouri, where he telephoned Mendola that he thought the bills were of poor quality and that he feared that he had been detected cashing the second bill. Mendola told him to return to Chicago and, at Lacinak's request, wired him $100. Lacinak did not return, but instead drove around the country with his wife, cashing the counterfeit bills (D.A. 10, 22).

On about December 5, 1960, Lacinak exchanged automobiles with Robert Connors, a man he had met at a bar. As part of the transaction, he gave Connors a package of counterfeit bills (D.A. 10–11, 16, 22).

Connors was shortly arrested for passing some of the counterfeit bills (D.A. 26–27, 12–13). Lacinak continued circulating counterfeit bills during the next few months (D.A. 11).

In March 1961, Lacinak gave the balance of the counterfeit money to Granville Turner, a fellow worker at a construction company in Phoenix, Arizona, who, in turn, transferred some of the bills to one Kish (D.A. 11–12, 16–17, 23, 25, 28–29). After Turner and Kish

passed some bills, they were arrested (D.A. 28–32, 12–13).

In August 1963, Lacinak was arrested by the Secret Service in Sedalia, Missouri (D.A. 12, 27). Lacinak had spent the proceeds of the passed bills for his personal needs and had not remitted any money to either Mendola or petitioner (D.A. 16). He had cashed approximately $3,000 of the counterfeit money (D.A. 17).

ARGUMENT

1. The evidence that in September 1960 petitioner delivered $7,000 in counterfeit bills to Lacinak after Mendola, Lacinak and petitioner agreed that Lacinak would travel around the country and pass the bills warranted the charge that petitioner was a conspirator in the distribution of counterfeit bills. Accordingly, there is no merit to his contention that the prosecution should have been limited to the substantive count (Pet. 14–29).

Nor did the naming of Connors and Turner as co-conspirators result in the admission of improper evidence against petitioner. Proof that Lacinak exchanged automobiles with Connors in order to continue his travels and distribution of counterfeit money would have been proper even if the conspiracy count had listed only the original three conspirators, since such acts illuminated the nature of the conspiracy (*Lutwak* v. *United States*, 344 U.S. 604), and, by the same token, the transfer of counterfeit money to Connors as part of this transaction could also be found to have been in furtherance of the objectives of the Septem-

ber agreement.[2] Evidence of the transfer of the counterfeit bills to Turner was also properly admitted. To be sure, since no consideration was received, the transfer arguably did not advance the objectives of the original agreement. But proof of the ultimate disposition of any of the counterfeit bills which Lacinak transferred was relevant—even under a narrower conspiracy charge—to show that the bills circulated were in fact counterfeit.[3] Unlike *United States* v. *Peoni*, 100 F. 2d 401 (C.A. 2), petitioner here was not held responsible for the possession of the counterfeit bills by Turner and Connors. Rather, his conviction was bottomed upon his agreement to distribute the bills.

The claim that the conspiracy terminated when Mendola told Lacinak to return to Chicago does not advance petitioner's position. Evidence of acts done after termination of a conspiracy may be received to show the nature of the conspiracy. *Lutwak* v. *United State*, 344 U.S. 604, 617. In any event, since Lacinak continued to distribute the counterfeit money, the date of the conspiracy's termination was an issue for the jury to decide.

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[2] The same is true of the statements of Lacinak to his wife that petitioner and Mendola had recommended a particular dye for the counterfeit money. Since petitioner knew that Lacinak was to travel with his wife when he tried to pass the money, such statements were within the ambit of the conspiracy.

[3] The jury could not have based its verdict upon a finding that the transfer to Turner was the only overt act proved, since it had to find that Panczko met with Mendola and Lacinak in September 1960 to find him a conspirator. Their meetings were alleged as overt acts. And see *Giardano* v. *United States*, 251 F. 2d 109, 115 (C.A. 8), certiorari denied, 356 U.S. 973.

2. Petitioner's contention that he was denied a speedy trial because the indictment was not returned until October 29, 1964 (Pet. 40–45) was properly rejected by the court of appeals (Pet. App. 3–5). The record indicates that the government was not aware of petitioner's involvement in the conspiracy until the arrest of Lacinak in August 1963. While petitioner was not indicted until fourteen months later, this interval was required for an investigation of Lacinak's story implicating petitioner. There was no "purposeful or oppressive" delay on the part of the government (*United States* v. *Ewell*, 383 U.S. 116, 120), and nothing comparable to the situation in *Ross* v. *United States*, 349 F. 2d 210 (C.A.D.C.), where the prosecution depended upon a witness who testified largely from a recollection refreshed from a notebook, while the defendant had no notes of the day in question. It is mere speculation that had Mendola not died before the trial he would have exonerated petitioner. Accordingly, there is no reason to depart here from the general principle that an indictment returned within the period of limitations fixed by Congress is valid. See *Hoopengarner* v. *United States*, 270 F. 2d 465 (C.A. 6); *D'Aquino* v. *United States*, 192 F. 2d 338, 350 (C.A. 9), certiorari denied, 343 U.S. 935; *Nickens* v. *United States*, 323 F. 2d 808 (C.A.D.C.).

3. Petitioner filed a motion for a continuance on the ground that he was prejudiced by an article in the August 6, 1965, issue of Life Magazine. The motion was denied and the trial commenced on October 25, 1965, about eleven weeks later. Petitioner complains

that he was restricted in asking questions of prospective jurors to elicit whether there was prejudice, but specifies no question that the trial judge refused to ask. Petitioner argues that three of the jurors had heard of him (see Pet. 52), but he points to not a single juror who had formed an opinion about petitioner or the case. Petitioner also cites the fact that Jenkins, the first prospective juror, had said that he had heard about petitioner through newspapers in the six years he had been in Chicago (Pet. 50). However, Jenkins had earlier said that nothing that he had read had created any feeling about the case (G.A. 14). There is accordingly no basis for a conclusion that petitioner did not have a fair jury.

4. The government asked that Gaetano Mendolia, father of Guy Mendola, be called as a court witness. When examined outside the presence of the jury, he said that his son had been killed on August 31, 1965. The court instructed him not not mention this fact to the jury (D.A. 33). Mendolia thereafter testified before the jury as a government witness that he had lived in the same building with his son, and that in 1960 or 1961 he had seen Lacinak and petitioner there at the same time (D.A. 34). When asked when was the last time he had seen petitioner, the witness replied: "When they told me, 'Your son is in Florida. He is going to get killed.' That's what they told me" (D.A. 35). Petitioner's motion for a mistrial was denied (D.A. 37-39). After defense counsel requested an admonition, the court instructed the jury to disregard this statement (D.A. 39-40). Later the court

gave a second admonition, stating in part that the answer of the witness "did not refer to a conversation between the witness and the defendant" (D.A. 45–46). The judge acted within his discretion in the handling of this matter. The implication in the petition that Mendolia was called only to prejudice the jury is unwarranted, particularly in view of petitioner's attack on the credibility of Lacinak (Pet. 35–40). That petitioner was with Lacinak at the Mendola home in the period described in Lacinak's testimony was significant corroborative evidence.

5. Petitioner contends (Pet. 30–31) that there was no need to give some of the instructions—which he characterizes as "standard" in conspiracy cases—because they had no direct application to the facts. The contention is without merit. While the conspiracy initially took the form of an express agreement, it was later manifested in other ways as well, so that there was no error in the instruction that express words are not necessary. The instruction as to the lack of necessity for a financial stake in the venture was not error, in view of the evidence that, although petitioner expected to make money by the plan, he did not. The jury was properly instructed that statements of a co-conspirator could be considered only if made in furtherance of the conspiracy. Since there was no other defendant on trial, it may have been unnecessary to instruct them that other statements could be considered only as to the persons who made them, but this was hardly reversible error. The fact that the judge did not give the requested instruction that testimony of a confessed

counterfeiter should be received "with great caution and acted upon only after it is carefully weighed and closely scrutinized" was not error since the judge charged the equivalent—that such testimony should be "closely examined and weighed with great care."

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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DECEMBER 1966.

U.S. GOVERNMENT PRINTING OFFICE: 1966